

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

BRYAN CALVO, in his official capacity
as councilmember for the City of Hialeah,

Plaintiff,

v.

Circuit Civil Division
Case No. _____

ESTEBAN BOVO, JR. in his official
capacity as mayor of the City of Hialeah,

Defendants.

_____/

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff Bryan Calvo, in his official capacity as a councilmember for the City of Hialeah, sues Esteban Bovo, Jr., in his official capacity as mayor of the City of Hialeah, and states as follows.

PRELIMINARY STATEMENT

1. Plaintiff Bryan Calvo, as a councilmember for the City of Hialeah, is obligated to investigate municipal issues for his constituents. This lawsuit addresses the mayor of Hialeah's unlawful interference with Councilman Calvo's investigation and inquiry into a broken system at Hialeah's 911 call center. Specifically, Councilman Calvo sought to uncover why thousands of 911 calls by Hialeah residents were going unanswered.

2. Defendant Esteban Bovo, Jr., in his official capacity as mayor of Hialeah, implemented a policy prohibiting councilmembers—including Councilman Calvo—from making *any* requests of city department heads without first going through the mayor. Mayor Bovo then directed the Hialeah city attorney and city clerk to prohibit Councilman Calvo from inspecting records of internal communications between city employees documenting Hialeah’s 911 call center crisis. Most recently, Mayor Bovo directed the city clerk and city attorney to preclude Councilman Calvo from adding items to the agenda city council meetings.

3. These actions by Mayor Bovo unlawfully infringed on Councilman Calvo’s obligation to advocate for his constituents by investigating and inquiring into municipal affairs. Accordingly, Councilman Calvo brings this lawsuit seeking a declaration that Mayor Bovo’s actions are unlawful and violate his rights and obligations as a councilmember under the Hialeah City Charter and Code of Ordinances. Councilman Calvo also seeks a permanent injunction prohibiting Mayor Bovo’s unlawful policies and protocols from being enforced. Put simply, this lawsuit seeks to check Mayor Bovo’s abuse of power as mayor of Hialeah, and to restore the balance of power to the city and the residents it serves.

PARTIES, JURISDICTION, AND VENUE

4. Plaintiff Bryan Calvo is a duly elected councilmember for the City of Hialeah (“Hialeah”), a Florida municipality, and files this lawsuit in his official capacity as a councilmember (“Councilman Calvo”).

5. Defendant Esteban Bovo, Jr. is the mayor of Hialeah, and this lawsuit is being filed against him in his official capacity as mayor (“Mayor Bovo”).

6. This is an action for declaratory relief under Florida’s Declaratory Judgments Act, Chapter 86, Florida Statutes (2023), and for injunctive relief.

7. The Court has subject matter jurisdiction over this action under article V, section 20(c)(3) of the Florida Constitution, and sections 26.012(2)(c) and 86.011, Florida Statutes (2023).

8. The Court has personal jurisdiction over Mayor Bovo because he is a resident of Miami-Dade County, Florida.

9. Venue is proper in Miami-Dade County, Florida, because the incidents giving rise to this action occurred in said county, and Mayor Bovo and Councilman Calvo both reside there.

FACTUAL ALLEGATIONS

A. Hialeah City Charter, Code of Ordinances, and Delineation of Powers

10. Hialeah was first incorporated nearly a century ago. With over 224,000 residents, Hialeah is the sixth-largest municipality in Florida, and the 100th-largest city in the United States.

11. Hialeah's City Charter and Code of Ordinances are its ultimate governing documents—they provide the framework under which Hialeah's local government operates.

12. Under its City Charter and Code of Ordinances, Hialeah has a "Strong Mayor-Council" form of government. This means that mayor serves as the city's political head, administering the city government and enforcing laws passed by the city council. And Hialeah's city council, a seven-member body of elected officials, enacts legislation, investigates and inquires into municipal affairs, oversees the mayor, and authorizes the municipal budget.

13. The City Charter and Code of Ordinances provides several ways for Hialeah's city council and mayor to check and balance one another. For example, when the city council adopts ordinances and resolutions, the mayor can veto those pieces of legislation, but the city council can still "override" a mayoral veto to enact legislation. *See* § 2.02(a), Hialeah City Charter.

B. City Council's Power to Inquire and Investigate

14. Important to this case, the City Charter grants the city council the “power and duty” to “investigate” all municipal affairs and “inquire into the conduct of any city office, department, or agency[:]”

The City Council shall have the following *powers and duties*:

* * *

To *inquire* into the conduct of any municipal office, department, agency or officer and to *investigate* municipal affairs, and for that purpose, may subpoena witnesses, administer oaths *and compel the production of books, papers or other evidence*.

§ 2.02(a)(6), Hialeah City Charter (emphasis added).

15. The Hialeah City Charter permits individual councilmembers to “deal” directly with city officers and employees when making “good faith” inquiries and investigations on municipal affairs:

Except for the purpose of inquiries and investigations made in good faith, ... councilmembers shall deal with city officers and employees, who are subject to the direction and supervision of the mayor, solely through the mayor....

§ 3.02(b), Hialeah City Charter (emphasis added).

C. City Clerk and City Attorney

16. Hialeah’s City Charter and Code of Ordinances give the mayor the power to appoint all department heads for the city. Two appointments are critical to this case: the city attorney and city clerk.

17. Hialeah's city attorney is under the mayor's direct supervision and is the "principal legal advisor of the city and the administrative head of the law department."¹

18. Hialeah's city clerk, also under the mayor's direct supervision, maintains all official city records and sets the agenda for city council meetings.²

D. Hialeah's 911 Call Center Crisis is Exposed

19. In November 2021, Councilman Calvo and Mayor Bovo were elected to their respective offices.

20. In December 2021, a consulting group hired by Hialeah performed an assessment of the city's police department, including its 911 call center.

21. In March 2022, the consulting group published a report on its findings on Hialeah's police department and 911 call center. The consulting group's findings on Hialeah's 911 call center were devastating, to say the least.

22. To start, the 911 call center was "woefully understaffed" – employing only six call-takers when the department was budgeted for at least twenty-one full-time call-takers. The call-takers were systematically overworked, underpaid, and often left unsupervised:

¹ § 4.03(a), Hialeah City Charter; § 2-147, Hialeah Code of Ordinances.

² §§ 4.01-4.02 and 3.07, Hialeah City Charter; § 2-117, Hialeah Code of Ordinances.

This high stress, understaffed, chaotic environment has resulted in high overtime rates, high turnover rates, and low retention rates.

One trainee recently quit after witnessing the environment (post classroom training), while another quit after they were mobilized during the last storm and realized she'd be required to sleep and stay there indefinitely.

* * *

No one has been able to attend outside trainings or sign up for classes due to understaffing.

* * *

One dispatcher expressed dismay that even though she gives CPR advice daily, she hasn't had the opportunity to take a CPR refresher class in seven years.³

23. The consulting group also found that Hialeah's 911 call center suffered from outdated, ineffective technology:

- The software is slow – the dispatcher is faster than the computer, so it locks up all the time.
- The mapping system is difficult – requires specific abbreviations for addresses that are not user friendly – e.g., “Str. Instead of St.”
- It doesn't integrate the GPS from the patrol cars – this is a safety issue because if they cannot pinpoint the exact location of an officer in trouble, backup could not arrive as quickly.

The phones, the radios, and the CAD system are all different and don't talk to each other. Currently patrol uses Harris radios with Motorola wiring. Harris doesn't have a noise cancelling function, so the Dispatcher must ask someone, at times up to 10 times, to repeat themselves in order to understand them.⁴

³ Jorge Colina Group, Hialeah Police Department Organizational Assessment: Findings and Recommendations, March 2022, pp. 44-45.

⁴ *Id.*

24. Hialeah's 911 call center employees were not trained on the proper scripts and protocols to use when answering 911 calls. And, even when the right 911 call scripts *were* used, the scripts were "time consuming and redundant, and often annoyed the caller."

25. On March 22, 2022, around the time Mayor Bovo received the consultant's report on Hialeah's police department and 911 call center, he issued an "administrative protocol" memorandum requiring all city department heads inform the mayor "anytime a council member reaches out to your department for assistance with an initiative or concern."

26. In September 2022, Mayor Bovo issued a second "administrative protocol" memorandum. This time, Mayor Bovo prohibited councilmembers from making "any and all requests for activities ... that require city resources" without first obtaining mayoral approval. The September 2022 memorandum, in its entirety, reads as follows:

To ensure that our efforts are aligned, it is important that we work together in following the proper administrative protocols. Any request of a member of our council to any city department head or administrator for assistance with an event or situation (including constituent needs) must be requested in writing to the Office of the Mayor.

Any and all requests for activities or events that require city resources must be submitted in writing to the Mayor at least three weeks prior to the event and include an itemized list of the resources requested and how the request will be funded. The Mayor's office will notify the departments in writing once the request is approved.

I am committed to assisting and supporting the council members and your department's efforts. In order to streamline the process and maximize our efficiency it is important that we are all working together and on the same page.

As always, my door is open and I look forward to continue working together.

27. The severe understaffing at Hialeah's 911 call center came into the public spotlight on March 28, 2023, when several call-center employees attended a city council meeting in a public cry for help. Andrew Glassmer, a six-year veteran police radio dispatcher in Hialeah's 911 call center told the city council that:

We are severely understaffed and unfortunately a lot of the problems with our staffing is retention. We can't retain people. We're losing them to other agencies that offer more tantalizing offers and you know good retirements that benefit them. We're losing them. We can't keep them.

* * *

We're not working eight-hour days. We work a 12-hour shift.

* * *

If we're short, we end up working a 16-hour day. And some of those days are without a lunch break. I know for a fact none of our supervisors ever get a break. They don't get a lunch break. So they're working 16 hours and sometimes they have to double up and cover dispatch positions that are empty because we can't get people.

* * *

And we just—we're asking—I'm a frontline employee, there's somebody else here that's here with me, you know, our manager's here, our division commander is here. And I'm asking, please, work with us to try and do something because you can consider us—I'm the canary in the coal mine here.

I've been here for six years and it's been a downhill trend since day one that I got here. And unfortunately we need your help. We are very, very desperate. I mean—really—the future outlook for our division is poor if drastic, rapid changes are not made.

* * *

We just—we need you guys to help us. We’re underwater right now. We can’t get the water out of the ship faster than it’s coming in.⁵

28. Mayor Bovo, in attendance when Mr. Glassmer made his statement to the city council, chastised him for addressing this issue in a public city council meeting: “I’m a little remiss that you have to come to the city council because there’s other avenues like coming directly to me perhaps one of your supervisors.” Mayor Bovo explained that, because Hialeah “is not a city *de lujos*” — meaning, not a city *of luxury*—there was not much that could be done to alleviate the 911 call center understaffing issue.⁶

29. Eddie Perez, a former 911 call center employee and currently the President of the American Federation of State and County and Municipal Employees, and also spoke out at the March 28, 2023, council meeting about understaffing at Hialeah’s 911 call center. Mr. Perez told the city council that, when he toured Hialeah’s 911 call center, there were only *four* employees on duty.

30. Councilman Calvo toured Hialeah’s 911 call center on April 18, 2023, as part of his duty to investigate and inquire into municipal affairs. He observed

⁵ Mr. Glassmer’s March 28, 2023, statement to the Hialeah city can be viewed in its entirety on YouTube: <https://youtu.be/jtCMEoWgVZQ?t=4385>.

⁶ Mayor Bovo’s response to Mr. Glassmer’s comments can also be viewed in their entirety on YouTube: <https://youtu.be/jtCMEoWgVZQ?t=4666>.

only *three* 911 call-takers on duty, including a rookie police dispatcher temporarily assigned to the 911 call center “to learn English by talking on the radio.”

31. After his tour of the 911 call center, Councilman Calvo requested a meeting with Mayor Bovo to discuss the situation. The mayor met with Councilman Calvo on April 24, 2023, and urged the mayor to take immediate action to remedy the situation, including paying higher salaries to 911 call-takers, increasing hiring bonuses, and improving working conditions at the call center. But Mayor Bovo would not commit to taking any concrete action.

32. The next day, April 25, 2023, the Miami Herald reported that, since the consulting group issued its report, Hialeah’s 911 call center lost another four dispatchers, two call-takers, two rapid-screen officers, a police lieutenant, and an electronic technician. Compounding the problem, Hialeah struggled to find suitable replacements for those vacancies because salaries for its 911 call center were the “lowest in the city.”⁷

33. In a June 2023 city council meeting, Councilman Calvo presented all the evidence he’d gathered on the ongoing understaffing crisis at Hialeah’s 911 call center. Councilman Calvo discussed his first-hand observations of the call

⁷ Egui Brito, V., Miami Herald, [Hialeah’s 911 call center says it has its own emergency: the number of personnel on duty, April 25, 2023, https://www.miamiherald.com/news/local/community/miami-dade/hialeah/article274580436.html](https://www.miamiherald.com/news/local/community/miami-dade/hialeah/article274580436.html).

center; the devastating findings from the March 2022 consultant's report; the Miami Herald's report that Hialeah's 911 call center missed nearly 8,000 phone calls in 2022, and almost 5,000 phone calls in the first five months of 2023;⁸ reports from Hialeah residents of their calls to 911 going unanswered; and the cry for help from Hialeah 911 call center employees at city council meeting on March 28, 2023. In response, the other councilmembers downplayed the severity of the issue — agreeing with the mayor that the city's 911 call answer rates were not *that* bad and, even if they were, there was nothing more the city could do about it.

34. Indeed, the next day, Mayor Bovo, stated that no investigation was necessary because Hialeah's 911 call center crisis was not that bad:

A spokesperson for Bovo's office confirmed to el Nuevo Herald that unanswered 911 calls happen in the city, but emphasized that this an issue "that happens everywhere."⁹

35. Notwithstanding the mayor and other councilmembers' disinterest in the issue, on June 29, 2023, Councilman Calvo sent a detailed written request to the city clerk seeking documents related to the 911 call center's operations.

⁸ Egui Brito, V., Miami Herald, Who is answering the 911 calls in Hialeah? Why some consider the response an emergency, June 23, 2023, <https://www.miamiherald.com/news/local/community/miami-dade/hialeah/article276660536.html>.

⁹ Egui Brito, V., Miami Herald, Hialeah mayor rules out inquiry into unanswered 911 calls. What he and others are saying, June 28, 2023, <https://www.miamiherald.com/news/local/community/miami-dade/hialeah/article276785201.html>

Councilman Calvo issued the request on his official councilmember letterhead, with a subject line reading “Investigation of the City of Hialeah 911 Department.” The letter made clear that Councilman Calvo was requesting records under his “authority as a city councilmember” in connection with his “investigation of all the documents in the department that will shed light on the current conditions and operations of [the 911 call center] department.”

36. The city clerk produced many documents and reports to Councilman Calvo in response to his request, but she did *not* provide over ten-thousand records of internal communications between city employees discussing the 911 call center issue.

E. The City Attorney’s Unlawful July 18, 2023, Memorandum

37. On July 10, 2023, Councilman Calvo attended a meeting with the city clerk, the acting city attorney at the time (Lorena Bravo), and the assistant city attorney (Alexander Magrisso) to address his request for internal communications records on the 911 call center issue. The city attorney advised Councilman Calvo that his request for records would be treated as a public records request because Councilman Calvo did not first obtain approval from the mayor or city council to request the documents. Thus, according to the city attorney, the more than 10,000 records of internal communications on the 911 call center issue had to be reviewed and redacted by the clerk before Councilman Calvo could view the records.

Councilman Calvo disagreed with the city attorney's conclusion and requested a memorandum detailing the legal basis for their position.

38. The next week, on July 18, 2023, the interim city attorney issued a memorandum explaining that Councilman Calvo could not request city records without approval from the mayor or the city council based on: (1) Mayor Bovo's "administrative protocol" memorandum, issued September 11, 2022, and (2) a nonbinding ruling from a trial judge in Escambia County, Florida.¹⁰

39. The city attorney made at least four legal errors in the July 18, 2023 memorandum. First, the nonbinding ruling relied on by the city attorney, *Myers v. Hayward*, actually supports Councilman Calvo's position. In that case, the court ruled that a memo from the mayor of the City of Pensacola restricting "requests" made by city councilmembers—*nearly identical to Mayor Bovo's September 2022 "administrative protocol" memorandum*—unlawfully restricted the city council's right to "investigate" and "inquire" into municipal affairs:

The Mayor, in his memorandum, ... stated that "any request regarding operations and services and/or recommendations for improvement of municipal government operations by individual Council Members must be sent directly to the Mayor's office."¹¹

* * *

¹⁰ *Myers v. Hayward*, 2012 WL 6964443, n.2 (Fla. 1st Cir. Ct. Sep. 28, 2012).

¹¹ Mayor Bovo's September 2022 memorandum reads as follows: "Any and all requests for activities or events that require city resources must be submitted in writing to the Mayor....The Mayor's office will notify the departments in writing once the request is approved."

What is problematic is that the Mayor's memorandum ... makes no exception for good faith inquiries and investigations by the City Council. The Mayor has no authority to direct that good faith inquiries and investigations, which would presumably fall within the ambit of the memorandum's command that "requests" be made by the City Council members, be made solely to the Mayor's office.

The Mayor does not possess the power to control inquiries and investigations in such a manner. To the extent the Mayor's policy attempts to do so, he has acted without authority.

Myers v. Hayward at *2-3 (cleaned up).

40. Second, the city attorney's memorandum fails to mention that, in *Myers*, the court did *not* address whether an individual council member could make an inquiry or investigation. The *Myers* court explained that it "need not resolve this issue" because the mayor's memorandum there—like Mayor Bovo's memorandum here—contained "no distinction between inquiries by individual council members that are on behalf of the City Council as a body and inquiries by individual council members that are not made on the authority of City Council as a whole." *Myers* at n. 2.

41. Third, the city attorney's memorandum fails to acknowledge that requiring an individual councilmember to obtain "approval" from the city council is a legal impossibility because there is no such procedure, protocol, or system in place. In other words, nothing in City Charter, nor the Code of Ordinances, nor any city resolution provides a way for Councilman Calvo to obtain council "approval" for an investigation or inquiry into a municipal affair. No reasonable

interpretation of the City Charter or Code of Ordinances would require Councilman Calvo to complete an impossible task before conducting an investigation or inquiry into a municipal issue. Yet this is exactly what the city attorney's July 18, 2023, memorandum requires of Councilman Calvo.

42. Fourth, the city attorney's memorandum ignores the fact that the city clerk never treated requests for records from sitting members of the city council as public records requests. Reporting by el Neuvo Herald shows that other local municipalities, including Miami Springs, Miami Gardens, Hialeah Gardens, Doral, and North Miami, also never treated their councilmembers' requests for records as public records requests requiring the redaction of confidential or exempt information.¹²

43. For at least these reasons, the city attorney's July 18, 2023, memorandum unlawfully violates Councilman Calvo's obligation and right as a city councilmember to make inquiries and investigations into municipal affairs.

¹² Egui Brito, V., el Nuevo Herald, Hialeah cobra a un concejal la solicitud de registros públicos. Bovo dice que desconfía de él, September 30, 2023, <https://www.elnuevoherald.com/noticias/florida/hialeah/article279737894.html>.

***F. The City Clerk Requires Councilman Calvo to
Pay Thousands of Dollars to Review the 911 Call Center Records***

44. In August and September 2023, the city clerk advised Councilman Calvo that internal communications on the 911 call center crisis had to be reviewed and redacted for “confidential or exempt information” before they could be produced (based on the interim city attorney’s July 18, 2023, memorandum). The city clerk also advised Councilman Calvo that he would have to pay for the records before the city clerk would begin reviewing and redacting them:

The cost estimate associated with Item 15 of your request includes a special service charge based on the labor cost, which consists of the employee's salary and benefits, providing the service of reviewing the records for any confidential or exempt information. Please note that the special service charge is for time spent in excess of fifteen minutes. It is estimated that it will take approximately one hundred and seventy hours (170) to review the records for confidential or exempt information.

Should you choose the processing of item 15 of your request to be assigned to personnel who will exclusively work on the request, please advise so that the appropriate person may be designated. Once the appropriate person is designated, I can provide you with a cost estimate based on the person’s salary and benefits.

* * *

The cost estimate associated with Item 15 of your request includes a special service charge based on the labor cost, which consists of the employee's salary and benefits, providing the service of reviewing the records for any confidential or exempt information. Please note that the special service charge is for time spent in excess of fifteen minutes. It is estimated that it will take approximately one hundred and seventy hours (170) to review the 10,242 email messages for confidential or exempt information, and redact these records for information that is exempt from public disclosure pursuant to law. The service charge is calculated based on the amount of time it took to produce the requested records multiplied by the hourly rate of pay and benefits of the least paid employee(s) capable of producing the records. Your estimated special service charge is \$6,769.00, calculated as follows: One hundred seventy hours based on the employee’s hourly rate (salary and benefits) of \$39.82.

45. On September 21, 2023, Councilman Calvo attended a meeting with Mayor Bovo’s staff, repeating his request to review the internal communications without redactions.

46. On September 27, 2023, Councilman Calvo attended a meeting with Mayor Bovo himself. Councilman Calvo *again* reiterated his request to review the internal communications on the 911 call center issue without redactions. Councilman Calvo told the mayor that he would be willing to review the records in a room at the mayor's offices, while being supervised by the mayor's staff. In response, Mayor Bovo stormed out of the meeting, refusing to address the issue.

47. In a September 30, 2023, statement to el Neuvo Herald, Mayor Bovo contended that Councilman Calvo would be permitted to review the internal communications in a room at the mayor's office. Yet a few days later, on October 3, 2023, the city clerk reiterated to Councilman Calvo that he could *not* inspect *any* of the records without the clerk first reviewing and redacting them. Indeed, in a October 6, 2023, statement to Miami's ABC News affiliate, Local 10, Mayor Bovo confirmed that—despite his statement to el Nuevo Herald one week prior—Councilman Calvo *could not* inspect the internal communications:

Mayor Esteban Bovo Jr. said that the request is not city business, so he will have to pay out of pocket.

"The council has told him and actually shut him down. What he is doing, we would charge any other resident...."¹³

¹³ Vazquez, C., WPLG Local 10 News, Hialeah councilman will need to spend nearly \$7k of own money to get public documents, he says, <https://www.local10.com/news/local/2023/10/06/hialeah-councilman-will-need-to-spend-nearly-7k-of-own-money-to-get-public-documents/>.

48. As of the filing of this lawsuit, Mayor Bovo *still* has not allowed Councilman Calvo to inspect the internal communications on the 911 call center crisis.

49. To understand why Calvo had a right to review the records on the 911 call center issue without council-approval, the Court need look no further than the city's response to a *different* records request made during this same timeframe.

50. In July 2023, Councilman Calvo requested the city clerk provide him with internal reports and records related to water hydrants in Hialeah. Councilman Calvo made this request in his capacity as a councilmember, and the city clerk produced these "confidential" records to him without issue – no review, no redactions, no fees:

From: "Fatjo, Marbelys" <MRubio@hialeahfl.gov>

Date: July 10, 2023 at 5:16:27 PM EDT

To: Council Member Bryan Calvo <bcalvo@hialeahfl.gov>

Cc: "Monreal, Ismare (COH)" <imonreal@hialeahfl.gov>, "Lynskey,

Kevin T." <ktl23195@hialeahfl.gov>, "Mayor Bovo (Staff)"

<EBovo@hialeahfl.gov>, "Bravo, Lorena" <LBravo@hialeahfl.gov>

Subject: FW: Request from Council Member Calvo

Good afternoon Council Member Calvo.

Per our conversation, please see the attached report. *As you confirmed to Lorena and I today, you are requesting this report in your capacity as a legislator of the City of Hialeah, and therefore the record is being provided to you unredacted as you have requested.* However, Lorena has expressed to you that *information included within the record may*

be confidential and exempt from public disclosure pursuant to Section 119.071(3) of the Florida Statutes. This record is as much confidential in your hands as it is in ours as public officials.

Moreover, Mr. Lynskey has advised me that he received a new report which we expect to receive soon. As soon as I have it, I will provide it to you.

Thank you,

Marbelys L. Rubio-Fatjo, Esq., CMC
City Clerk
Office of the City Clerk
City of Hialeah
501 Palm Avenue, 3rd Floor
Hialeah, Florida 33010
(305) 883-5820

See City Clerk email to Councilman Calvo dated July 10, 2023 (emphasis added).

51. To be clear: Councilman Calvo requested these “confidential” records related to water hydrants in his official capacity as an individual councilmember. He did not first obtain “approval” from the city council for this request. And the city clerk never asked whether the city council “approved” the request. Yet this was not an issue when it came to *these* confidential records—the clerk provided the records to Councilman Calvo “unredacted as you have requested” because “you are requesting this report in your capacity as a legislator of the City of Hialeah....” This is *directly contrary* to the position taken by the city attorney and city clerk (at Mayor Bovo’s direction and approval) in response to Councilman Calvo’s request for records in the 911 call center crisis.

52. Underscoring the point, the city clerk copied Mayor Bovo and the city attorney (Lorena Bravo) on her July 10, 2023, email to Councilman Calvo providing him with unredacted copies of confidential city records on the water hydrant issue. This shows that Mayor Bovo approved *this* request by Councilman Calvo for city records on water hydrants, while arbitrarily disapproving of Councilman Calvo's request for city records on the 911 call center crisis.

53. But the City Charter does not allow the mayor to arbitrarily approve or deny requests for records made by councilmembers. Put simply, if Councilman Calvo was authorized to inspect confidential city records related to water hydrants without the council first approving the request, then he was allowed to do the same for the 911 call center crisis records.

G. The City Attorney's Unlawful September 11, 2023, Memorandum

54. On August 29, 2023, amid his attempts to investigate Hialeah's 911 call center crisis, Councilman Calvo emailed the city clerk asking to "please add an item to the agenda for the October 10th meeting of the council re a water initiative I am sponsoring. It will be a nonvoting item."

55. The city clerk denied Councilman Calvo's request on September 11, 2023. She wrongly asserted that Councilman Calvo was attempting to add a "nonagenda item" to the agenda, which cannot be done absent approval from the

mayor, or three other councilmembers. The city clerk advised Councilman Calvo that the city attorney supported her decision.

56. So Councilman Calvo requested the city attorney issue a memorandum explaining this decision, which they did that same day.¹⁴ The city attorney (wrongly) concluded that Councilman Calvo could not request that an item be added to a city council meeting agenda “because it was not discussed with the Mayor in advance for placement on such agenda.”

Question

May an individual Council Member place items on the agenda for a discussion or vote?

Summation of Answer

A Council Member must place items on the agenda in accordance with Section 30-31 the City Code provision dealing with public meetings and the Agenda for City Council Meetings. ¹ A Council Member cannot individually place initiatives and the like on the agenda in light of Section 30-31 of the City Code. Per your email an initiative and the like are brought up by the Council Member at the public meeting and is not on the agenda because it was not discussed with the Mayor in advance for placement on such agenda.

57. The next day, September 12, 2023, Mayor Bovo’s chief of staff emailed Councilman Calvo and reiterated that he was not authorized to add “a non-council item” to the agenda without first obtaining the mayor’s approval.

58. As Councilman Calvo explained to the mayor’s chief of staff in an email (and previously to the city clerk and city attorney), nothing in the Hialeah City Charter nor the Code of Ordinances grants the mayor *carte blanche* control

¹⁴ See City of Hialeah Law Department Memorandum (LO 2023-2).

over the agenda for city council meetings. While the mayor can “present *recommendations* to the city council on the requirements of its municipal government,”¹⁵ nothing gives the mayor the right to refuse items being added to the agenda for city council meetings.¹⁶ Thus, Mayor Bovo’s policy requiring *he* personally approve items being added to the agenda for city council meetings violated Councilman Calvo’s rights under the Hialeah City Charter and Code of Ordinances.

59. Mayor Bovo (acting through the city attorney and city clerk) also overlooked the fact that Councilman Calvo never sought to add a “non-agenda item” to the agenda for the October 10, 2023, city council meeting. “Non-agenda items” are those added to the agenda less than four days before a city council meeting occurs.¹⁷ Councilman Calvo sought to add an item to the agenda *forty-two days* before the meeting occurred – well ahead of the four-day timeframe for “non-agenda” items.

60. Thus, Councilman Calvo did *not* request to add a “non-agenda” item to the agenda. Instead, he made a routine request. Thus, there was no valid legal basis to deny Councilman Calvo’s request.

¹⁵ § 2.01(a)(3), Hialeah City Charter (emphasis added).

¹⁶ § 30-31(a), Hialeah Code of Ordinances.

¹⁷ § 30-31(a) and (d), Hialeah Code of Ordinances.

61. To this day, Mayor Bovo *still* has not approved Councilman Calvo's request to add an item to a city council agenda.

COUNT 1
DECLARATIVE RELIEF ON MAYOR BOVO'S SEPTEMBER 1, 2022
"ADMINISTRATIVE PROTOCOL" MEMORANDUM

62. Councilman Calvo realleges paragraphs 1 through 61 as if fully set forth herein.

63. There is a bona fide, actual, present practical need for a declaration of Councilman Calvo's rights and obligations as a Hialeah councilmember under Hialeah's City Charter and Code of Ordinances.

64. Mayor Bovo's September 1, 2022 "administrative protocol" memorandum requiring councilmembers seek mayoral approval of "any and all requests" from city employees violates, limits, and/or interferes with Councilman Calvo's rights and obligations as a Hialeah councilmember, creating a present, ascertained or ascertainable state of facts and present controversy as to the scope of Councilman Calvo's rights as a Hialeah councilmember.

65. Councilman Calvo's rights and obligations as a Hialeah councilmember depend on the Court's interpretation of the Hialeah City Charter, the Hialeah Code of Ordinances, and Mayor Bovo's September 1, 2022 "administrative protocol" memorandum.

66. Mayor Bovo, in his official capacity as the mayor of Hialeah, has an actual, present, adverse, and antagonistic interest in determining whether Councilman Calvo's rights and obligations as a Hialeah councilmember are violated, limited, and/or interfered with by Mayor Bovo's September 1, 2022 "administrative protocol" memorandum because Mayor Bovo directed and approved issuance of the memorandum.

67. As Councilman Calvo and Mayor Bovo are both parties here in their official capacities as councilmember and mayor of Hialeah, respectively, their antagonistic and adverse interests on this issue are all before the Court by proper process.

68. The relief sought by Councilman Calvo is not merely the giving of legal advice by the Court or the answer to questions propounded from curiosity. Instead, Councilman Calvo seeks a legal declaration that Mayor Bovo's September 1, 2022 "administrative protocol" memorandum violates, limits, and interferes with Councilman Calvo's rights and obligations to inquire into the conduct of any municipal office, department, agency or officer, to investigate municipal affairs in good faith, and to subpoena witnesses, administer oaths, and compel the production of books, papers, or other evidence under §§ 2.02(a)(6) and 3.02(b) of the Hialeah City Charter.

69. Through this declaratory action, Councilman Calvo presents the Court with a justiciable question of law and fact as to whether his rights and obligations as a Hialeah councilmember under §§ 2.02(a)(6) and 3.02(b) of the Hialeah City Charter to inquire into the conduct of any municipal office, department, agency or officer, to investigate municipal affairs in good faith, and to subpoena witnesses, administer oaths, and compel the production of books, papers, or other evidence are violated, limited, and interfered with by Mayor Bovo's September 1, 2022 "administrative protocol" memorandum.

70. Councilman Calvo is in doubt as to his rights and obligations as a city councilmember to inquire into the conduct of any municipal office, department, agency or officer, to investigate municipal affairs in good faith, and to subpoena witnesses, administer oaths, and compel the production of books, papers, or other evidence to the agenda for city council meetings because of Mayor Bovo's September 1, 2022 "administrative protocol" memorandum.

71. Thus, Councilman Calvo seeks declarative relief as to whether Mayor Bovo's September 1, 2022 "administrative protocol" memorandum interferes, limits, and violates Councilman Calvo's rights and obligations as a Hialeah councilmember under §§ 2.02(a)(6) and 3.02(b) of the Hialeah City Charter.

WHEREFORE, Councilman Calvo requests a declaratory judgment finding that Mayor Bovo's September 1, 2022 "administrative protocol" memorandum is

unlawful because it interferes, limits, and violates Bryan Calvo's rights and obligations as a Hialeah councilmember under §§ 2.02(a)(6) and 3.02(b) of the Hialeah City Charter. Councilman Calvo also requests that the Court award him attorneys' fees and costs pursuant to § 111.07, Fla. Stat. (2023) and *Thornber v. City of Ft. Walton Beach*, 568 So. 2d 914 (Fla. 1990), and grant any other relief the Court finds just and proper under the circumstances.

COUNT 2
PERMANENT INJUNCTION ON
MAYOR BOVO'S SEPTEMBER 1, 2022,
"ADMINISTRATIVE PROTOCOL" MEMORANDUM

72. Councilman Calvo realleges paragraphs 1 through 61 and Count 1, above, as if fully set forth herein.

73. As detailed above in Count 1, Mayor Bovo's September 1, 2022, "administrative protocol" memorandum unlawfully violates, limits, and interferes with Councilman Calvo's clear legal rights and obligations as a Hialeah councilmember under §§ 2.02(a)(6) and 3.02(b) of the Hialeah City Charter.

74. Councilman Calvo has no adequate remedy at law his rights and obligations as a Hialeah councilmember under §§ 2.02(a)(6) and 3.02(b) of the Hialeah City Charter being violated by Mayor Bovo's September 1, 2022, "administrative protocol" memorandum

75. Absent a permanent injunction, Councilman Calvo will suffer irreparable harm from the application and enforcement of Mayor Bovo's

September 1, 2022 “administrative protocol” memorandum because Councilman Calvo will be unable to fulfill his legal and civic obligations as a Hialeah councilmember under §§ 2.02(a)(6) and 3.02(b) of the Hialeah City Charter.

76. The balance of equities favors entering a permanent injunction prohibiting enforcement of Mayor Bovo’s unlawful September 1, 2022, “administrative protocol” memorandum because it not only interferes, limits, and violates Councilman Calvo’s rights and obligations as a councilmember, but also compromises the democratic process and safety and welfare of Hialeah’s citizens.

77. A permanent injunction also serves the public interest by restoring the balance of power, protecting the rule of law and democratic principles, and ensuring the proper functioning of city government.

WHEREFORE, Councilman Calvo requests that the Court enter a permanent injunction prohibiting the enforcement of Mayor Bovo’s unlawful September 1, 2022, “administrative protocol” memorandum. Councilman Calvo also requests that the Court award him attorneys’ fees and costs pursuant to § 111.07, Fla. Stat. (2023) and *Thornber v. City of Ft. Walton Beach*, 568 So. 2d 914 (Fla. 1990), and grant any other relief the Court finds just and proper under the circumstances.

COUNT 3
DECLARATIVE RELIEF ON CITY ATTORNEY'S
JULY 18, 2023, MEMORANDUM (LO 2023-1)

78. Councilman Calvo realleges paragraphs 1 through 61 as if fully set forth herein.

79. There is a bona fide, actual, present practical need for a declaration of Councilman Calvo's rights and obligations as a Hialeah councilmember under Hialeah's City Charter and Code of Ordinances.

80. The Hialeah city attorney's July 18, 2023, memorandum (LO 2023-1), issued at the direction and approval of Mayor Bovo, violates, limits, and interferes with Councilman Calvo's rights and obligations as a Hialeah councilmember, creating a present, ascertained or ascertainable state of facts and present controversy as to Councilman Calvo's rights and obligations as a Hialeah councilmember.

81. Councilman Calvo's rights and obligations as a Hialeah councilmember depend on the Court's interpretation of the Hialeah City Charter and Code of Ordinances, and the Hialeah city attorney's July 18, 2023, memorandum (LO 2023-1), issued at the direction and approval of Mayor Bovo.

82. Mayor Bovo, in his official capacity as the mayor of Hialeah, has an actual, present, adverse, and antagonistic interest in determining whether Councilman Calvo's rights and obligations as a Hialeah councilmember are

violated, limited, and interfered with by the Hialeah city attorney's July 18, 2023, memorandum (LO 2023-1) because Mayor Bovo directed and approved issuance of the memorandum.

83. As Councilman Calvo and Mayor Bovo are both parties here in their respective official capacities as councilmember and mayor of Hialeah, respectively, their antagonistic and adverse interests on this issue are all before the Court by proper process.

84. The relief sought by Councilman Calvo is not merely the giving of legal advice by the Court or the answer to questions propounded from curiosity. Instead, Councilman Calvo seeks a legal declaration that the Hialeah city attorney's July 18, 2023, memorandum (LO 2023-1), issued at the direction and approval of Mayor Bovo, violates, limits, and interferes with Councilman Calvo's rights and obligations to inquire into the conduct of any municipal office, department, agency or officer, to investigate municipal affairs in good faith, and to subpoena witnesses, administer oaths, and compel the production of books, papers, or other evidence under §§ 2.02(a)(6) and 3.02(b) of the Hialeah City Charter.

85. Through this declaratory action, Councilman Calvo presents the Court with a justiciable question of law and fact as to whether his rights and obligations as a Hialeah councilmember under §§ 2.02(a)(6) and 3.02(b) of the

Hialeah City Charter to inquire into the conduct of any municipal office, department, agency or officer, to investigate municipal affairs in good faith, and to subpoena witnesses, administer oaths, and compel the production of books, papers, or other evidence are violated, limited, and interfered with by the Hialeah city attorney's July 18, 2023, memorandum (LO 2023-1), issued at the direction and approval of Mayor Bovo.

86. Councilman Calvo is in doubt as to his rights and obligations as a city councilmember to inquire into the conduct of any municipal office, department, agency or officer, to investigate municipal affairs in good faith, and to subpoena witnesses, administer oaths, and compel the production of books, papers, or other evidence to the agenda for city council meetings because of the Hialeah city attorney's September 11, 2023, memorandum (LO 2023-2), issued at the direction and approval of Mayor Bovo.

87. Thus, Councilman Calvo seeks declarative relief as to whether the Hialeah city attorney's July 18, 2023, memorandum (LO 2023-1), issued at the direction and approval of Mayor Bovo, violates, limits, and interferes with his rights and obligations as a city councilmember under §§ 2.02(a)(6) and 3.02(b) of the Hialeah City Charter.

WHEREFORE, Councilman Calvo requests that the Court enter a declaratory judgment finding that the city attorney's July 18, 2023 memorandum

(LO 2023-1), issued at the direction and approval of Mayor Bovo, is unlawful because it violates, limits, and interferes with Councilman Calvo's rights and obligations as a councilmember under §§ 2.02(a)(6) and 3.02(b) of the Hialeah City Charter. Councilman Calvo also requests that the Court award him attorneys' fees and costs pursuant to § 111.07, Fla. Stat. and *Thornber v. City of Ft. Walton Beach*, 568 So. 2d 914 (Fla. 1990), and grant any other relief the Court finds just and proper under the circumstances.

COUNT 4
PERMANENT INJUNCTION ON CITY ATTORNEY'S
JULY 18, 2023, MEMORANDUM (LO 2023-1)

88. Councilman Calvo realleges paragraphs 1 through 61 and Count 3, above, as if fully set forth herein.

89. As detailed above in Count 3, the Hialeah city attorney's July 18, 2023, memorandum (LO 2023-1), issued at the direction and approval of Mayor Bovo, unlawfully violates, limits, and interferes with Councilman Calvo's clear legal rights and obligations as a Hialeah councilmember under §§ 2.02(a)(6) and 3.02(b) of the Hialeah City Charter.

90. Councilman Calvo has no adequate remedy at law for his rights and obligations as a Hialeah councilmember under §§ 2.02(a)(6) and 3.02(b) of the Hialeah City Charter being violated by the Hialeah city attorney's July 18, 2023, memorandum (LO 2023-1), issued at the direction and approval of Mayor Bovo.

91. Absent a permanent injunction, Councilman Calvo will suffer irreparable harm from the application and enforcement of the Hialeah city attorney's July 18, 2023, memorandum (LO 2023-1), issued at the direction and approval of Mayor Bovo, because Councilman Calvo will be unable to fulfill his legal and civic obligations as a city councilmember under §§ 2.02(a)(6) and 3.02(b) of the Hialeah City Charter.

92. The balance of equities favors entering a permanent injunction prohibiting enforcement of the Hialeah city attorney's unlawful July 18, 2023, memorandum (LO 2023-1), issued at the direction and approval of Mayor Bovo, because it not only violates Councilman Calvo's rights and obligations as a councilmember, but also compromises the democratic process and safety and welfare of Hialeah's citizens.

93. A permanent injunction would also serve the public interest by restoring the balance of power, protecting the rule of law and democratic principles, and ensuring the proper functioning of city government.

WHEREFORE, Councilman Calvo requests that the Court enter a permanent injunction prohibiting the enforcement of the Hialeah city attorney's unlawful July 18, 2023, memorandum (LO 2023-1), issued at the direction and approval of Mayor Bovo. Councilman Calvo also requests that the Court award him attorneys' fees and costs pursuant to § 111.07, Fla. Stat. and *Thornber v. City of*

Ft. Walton Beach, 568 So. 2d 914 (Fla. 1990), and grant any other relief the Court finds just and proper under the circumstances.

COUNT 5
DECLARATIVE RELIEF ON CITY ATTORNEY'S
SEPTEMBER 11, 2023, MEMORANDUM (LO 2023-2)

94. Councilman Calvo realleges paragraphs 1 through 61 as if fully set forth herein.

95. There is a bona fide, actual, present practical need for a declaration of Councilman Calvo's rights and obligations as a Hialeah councilmember under Hialeah's City Charter and Code of Ordinances, and Hialeah Resolution 08-161, Rules and Procedures for City Council meetings of the City of Hialeah, Florida.

96. The Hialeah city attorney's September 11, 2023, memorandum (LO 2023-2), issued at the direction and approval of Mayor Bovo, violates, limits, and interferes with Councilman Calvo's rights and obligations as a Hialeah councilmember, creating a present, ascertained or ascertainable state of facts and present controversy as to Councilman Calvo's rights and obligations as a Hialeah councilmember.

97. Councilman Calvo's rights and obligations as a Hialeah councilmember depend on the Court's interpretation of the Hialeah City Charter and Code of Ordinances, Hialeah Resolution 08-161, Rules and Procedures for City Council meetings of the City of Hialeah, Florida and the Hialeah city attorney's

September 11, 2023, memorandum (LO 2023-2), issued at the direction and approval of Mayor Bovo.

98. Mayor Bovo, in his official capacity as the mayor of Hialeah, has an actual, present, adverse, and antagonistic interest in determining whether Councilman Calvo's rights and obligations as a Hialeah councilmember are violated, limited, and interfered with by the Hialeah city attorney's September 11, 2023, memorandum (LO 2023-2) because Mayor Bovo directed and approved issuance of the memorandum.

99. As Councilman Calvo and Mayor Bovo are both parties here in their respective official capacities as councilmember and mayor of Hialeah, respectively, their antagonistic and adverse interests on this issue are all before the Court by proper process.

100. The relief sought by Councilman Calvo is not merely the giving of legal advice by the Court or the answer to questions propounded from curiosity. Instead, Councilman Calvo seeks a legal declaration that the Hialeah city attorney's September 11, 2023, memorandum (LO 2023-2), issued at the direction and approval of Mayor Bovo, violates, limits, and interferes with Councilman Calvo's rights and obligations to add items to the agenda for city council meetings without mayoral approval under § 3.01(a)-(b) of the Hialeah City Charter, § 30-31

of the Hialeah Code of Ordinances, and Hialeah Resolution 08-161, Rules and Procedures for City Council meetings of the City of Hialeah, Florida.

101. Through this declaratory action, Councilman Calvo presents the Court with a justiciable question of law and fact as to whether his rights and obligations as a Hialeah councilmember to add items to the agenda for city council meetings without mayoral approval under § 3.01(a)-(b) of the Hialeah City Charter, § 30-31 of the Hialeah Code of Ordinances, and Hialeah Resolution 08-161, Rules and Procedures for City Council meetings of the City of Hialeah, Florida, are violated, limited, and interfered with by the Hialeah city attorney's September 11, 2023, memorandum (LO 2023-2), issued at the direction and approval of Mayor Bovo.

102. Councilman Calvo is in doubt as to his rights and obligations to add items to the agenda for city council meetings because of the Hialeah city attorney's September 11, 2023, memorandum (LO 2023-2).

103. Thus, Councilman Calvo seeks declarative relief as to whether his rights and obligations as a city councilmember under § 3.01(a)-(b) of the Hialeah City Charter, § 30-31 of the Hialeah Code of Ordinances, and Hialeah Resolution 08-161, Rules and Procedures for City Council meetings of the City of Hialeah, Florida are violated by the Hialeah city attorney's September 11, 2023, memorandum (LO 2023-2).

WHEREFORE, Councilman Calvo requests a declaratory judgment finding that the Hialeah city attorney's September 11, 2023, memorandum (LO 2023-2), issued at the direction and approval of Mayor Bovo, is unlawful because it violates Councilman Calvo's right and obligations as a councilmember to add items to the agenda for city council meetings under § 3.01(a)-(b) of the Hialeah City Charter, § 30-31 of the Hialeah Code of Ordinances, and Hialeah Resolution 08-161, Rules and Procedures for City Council Meetings of the City of Hialeah, Florida. Councilman Calvo also requests that the Court award him attorneys' fees and costs pursuant to § 111.07, Fla. Stat. and *Thorner v. City of Ft. Walton Beach*, 568 So. 2d 914 (Fla. 1990), and grant any other relief the Court finds just and proper under the circumstances.

COUNT 6

**PERMANENT INJUNCTION ON CITY ATTORNEY'S
SEPTEMBER 11, 2023, MEMORANDUM (LO 2023-2)**

104. Councilman Calvo realleges paragraphs 1 through 61 and Count 5, above, as if fully set forth herein.

105. As detailed above in Count 5, the Hialeah city attorney's September 11, 2023, memorandum (LO 2023-2), issued at the direction and approval of Mayor Bovo, violated Councilman Calvo's clear legal rights and obligations as a Hialeah councilmember under § 3.01(a)-(b) of the Hialeah City Charter, § 30-31 of the

Hialeah Code of Ordinances, and Hialeah Resolution 08-161, Rules and Procedures for City Council meetings of the City of Hialeah, Florida.

106. Councilman Calvo has no adequate remedy at law for his rights and obligations as a Hialeah councilmember under § 3.01(a)-(b) of the Hialeah City Charter, § 30-31 of the Hialeah Code of Ordinances, and Hialeah Resolution 08-161, Rules and Procedures for City Council meetings of the City of Hialeah, Florida being violated by the Hialeah city attorney's September 11, 2023, memorandum (LO 2023-2), issued at the direction and approval of Mayor Bovo.

107. Absent a permanent injunction, Councilman Calvo will suffer irreparable harm from the application and enforcement of the city attorney's September 11, 2023 memorandum (LO 2023-2) because Councilman Calvo will be unable to fulfill his legal and civic obligations as a city councilmember under § 3.01(a)-(b) of the Hialeah City Charter, § 30-31 of the Hialeah Code of Ordinances, and Hialeah Resolution 08-161, Rules and Procedures for City Council meetings of the City of Hialeah, Florida.

108. The balance of equities favors entering a permanent injunction prohibiting enforcement of the Hialeah city attorney's unlawful September 11, 2023, memorandum (LO 2023-2), issued at the direction and approval of Mayor Bovo, because it not only violates Councilman Calvo's rights and obligations as a

councilmember, but also compromises the democratic process and safety and welfare of Hialeah's citizens.

109. A permanent injunction would also serve the public interest by restoring the balance of power, protecting the rule of law and democratic principles, and ensuring the proper functioning of city government.

WHEREFORE, Councilman Calvo requests that the Court enter a permanent injunction prohibiting the enforcement of the Hialeah city attorney's unlawful September 11, 2023, memorandum (LO 2023-2), issued at the direction and approval of Mayor Bovo. Councilman Calvo also requests that the Court award him attorneys' fees and costs pursuant to § 111.07, Fla. Stat. and *Thornber v. City of Ft. Walton Beach*, 568 So. 2d 914 (Fla. 1990), and grant any other relief the Court finds just and proper under the circumstances.

DEMAND FOR JURY TRIAL

Councilman Calvo demands a trial by jury on all issues so triable as permitted by Florida law, including section 86.071, Fla. Stat. (2023).

Dated: October 23, 2023.

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Respectfully submitted,

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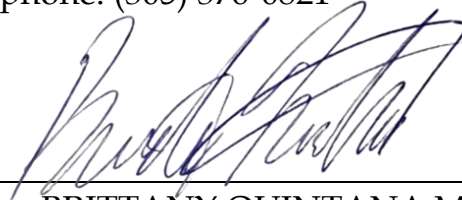
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